



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE **Consider Introduction of Ordinance Designating Specified Hazardous Chemicals as Nuisances**

MEETING DATE: **April 2, 1997**

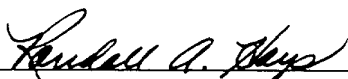
SUBMITTED BY: **Randall A. Hays, City Attorney**

RECOMMENDED ACTION: That the City Council introduce Ordinance designating specified hazardous chemicals as nuisances.

BACKGROUND INFORMATION: The ordinance that is presented to Council this evening for consideration, is another one of the building blocks in the program the City is undertaking to address the PCE/TCE contamination situation in Lodi. California Government Code Section 38771 states that a City may declare by ordinance those things which it deems to be nuisances. The purpose of this ordinance is to exercise that authority given to the City. By so doing, the City establishes the predicate of nuisance per say relative to the specified chemicals, thereby eliminating numerous problems of proof in a litigation circumstance and dramatically accelerating the contemplated environmental enforcement and litigation process to be undertaken against insurers.

The ordinance as drafted excludes from the declaration of nuisance domestic or residential sources of the chemicals specified. This makes very clear the Council's policy that in pursuing enforcement relative to PCE/TCE contamination, those uses are not subject to enforcement undertakings.

FUNDING: **Not applicable.**



Randall A. Hays, City Attorney

APPROVED: _____



H. D. FLYNN
City Manager

ORDINANCE NO. 1647

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI
AMENDING TITLE 8 - HEALTH AND SAFETY OF THE LODI MUNICIPAL CODE
BY ADDING CHAPTER 8.22, RELATING TO THE DECLARATION OF NUISANCES
AS TO SPECIFIC HAZARDOUS CHEMICALS**

CHAPTER 8.22

Sections:

- 8.22.010 Declaration of a Nuisance.**
8.22.020 Definitions.
8.22.030 Nuisance.

Section 8.22.010 - Declaration of a Nuisance:

Significant quantities of Hazardous Substances have come to be located and further threaten to become located in the soil and groundwater in and emanating from the City of Lodi; and

The City of Lodi has commenced, in cooperation with other governmental agencies having concurrent jurisdiction and authority, an investigation into the nature and extent of the impacts on human health, welfare and the local environment resulting from Hazardous Substance contamination of the soil and groundwater in and emanating from the City of Lodi; and

The Hazardous Substance contamination of the soil and groundwater in and emanating from the City of Lodi causes or threatens to cause significant and unacceptable impacts on the human health, welfare, public resources and environment for present and future generations of the local community; and

The City Council, the duly elected legislative body of the City of Lodi, has met and duly enacted the following Declaration of Nuisance, pursuant to its authority under the California Constitution, the California Government Code, specifically including but not limited to California Government Code §38771;

NOW THEREFORE the City Council of the City of Lodi does ordain as follows:

8.22.20 - Definitions:

Whenever used in this Ordinance, the following terms shall have the meanings set forth below:

- (a) The term "Discharge" shall mean the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, dumping, depositing, disposing, or placing of Hazardous Substances, or any constituent thereof, into or on the Environment.

- (b) The term "Domestic Source" shall mean emanating or originating from a household or residence, and shall specifically not include hotels, motels, or facilities the principal residential use of which is for industrial or commercial, for-profit purposes.
- (c) The term "Environment" shall mean any surface water, ground water, soil water, drinking water supply, soil, land surface, or subsurface strata, or ambient air within, under the jurisdiction of, or affected by conditions emanating from the City of Lodi.
- (d) The term "Hazardous Substances" shall mean the following:
 - (1) Tetrachloroethene (PCE), Trichloroethene (TCE), 1,1,1-Trichloroethane (1,1,1-TCA), 1,1-Dichloroethene (1,1 DCE), cis 1,2-Dichloroethene (c-1,2 DCE), 1,2-Dichloroethane (1,2 DCA), 1,1-Dichloroethane (1,1, DCA), Benzene, Toluene, Ethylbenzene, Xylene, Chromic Acid, Hexavalent Chromium, Bromodichloromethane, Carbon Tetrachloride, Chloroethane (Ethyl Chloride), Chloromethane (Methyl Chloride), Dibromochloromethane, 1,4-Dichlorobenzene, Dichlorodifluoromethane, Dichloromethane, trans-1,2-Dichloroethene, 1,2,3,-Trichloropropane, and Chloroethene (Vinyl Chloride); and
 - (2) Such other materials as are included within the definitions set forth in:
 - (A) 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub.L. 99-499, 100 Stat. 1613, and as further amended by the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996, Pub.L. 104-208, 110 Stat. 3009, 42 U.S.C. §§ 9601-9675;
 - (B) 42 U.S.C. § 6904(5) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as further amended by the Hazardous and Solid Waste Amendments of 1984, and as further amended by the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996, Pub.L. 104-208, 110 Stat. 3009, 42 U.S.C. §§ 6901 - 6992k (hereinafter collectively "RCRA");
 - (C) RCRA Section 9001(8), 42 U.S.C. § 6991(8);
 - (D) Section 307(a) of the Federal Water Pollution Control Act, as amended by the federal Clean Water Act, 33 U.S.C. § 1317(a), and its implementing regulations;

- (E) Section 2701(23) of the federal Oil Pollution Act of 1990, 33 U.S.C. § 2701(23);
 - (F) Section 112(6) of the federal Clean Air Act, 42 U.S.C. § 7412(6);
 - (G) Section 25299.22 of the California Health and Safety Code;
- (3) any radioactive material; and
 - (4) any other substance, as determined by the City Council of the City of Lodi, which poses or may pose a threat to the human health, welfare, public resources or the environment within, or under the jurisdiction of, the City of Lodi.
- (e) The term "Unpermitted" shall mean other than as expressly authorized by valid permit or similar express authorization issued by a federal, state, county, city or other governmental unit or agency acting within its jurisdiction, which permit or other similar express authorization allows the presence of Hazardous Substances in the Environment where they are located or threaten to become located.
 - (f) The term "Unregulated" shall mean other than as expressly authorized by federal, state, county, city or other duly promulgated and valid statute, ordinance, regulation, rule or other legislative enactment or duly authorized and validly promulgated administrative requirement of a governmental agency acting within its jurisdiction which enactment or administrative requirement expressly allows the presence of Hazardous Substances in the Environment where they are located or threaten to become located.

Section 8.22.030 - Nuisance:

- (a) The Unpermitted or Unregulated presence, resulting from other than a Domestic Source, of a Hazardous Substance in the Environment or in a location where it may threaten to enter into the Environment is a public nuisance.
- (b) Any permit, regulation, rule or other governmental authorization to discharge a Hazardous Substance into or otherwise place a Hazardous Substance in a pipe, lateral, sewer, manhole, or other conveyance shall neither be nor constitute either a permitted presence or regulated presence within the meaning of Paragraphs 1(e) or (f), respectively, unless that regulation, permit, rule or other governmental authorization expressly authorizes, in the valid exercise of jurisdiction by the governmental authority that promulgated or issued the authorization, the discharge of that Hazardous Substance into the Environment where it has become located or threatens to become located, and unless all such discharges or

placements of Hazardous Substances were in strict compliance with all of the terms, conditions and requirements of the regulation, permit, rule or other authority authorizing the discharge or placement of the Hazardous Substances into the Environment.

No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this ____ day of _____, 1997

PHILLIP A. PENNINO
Mayor

Attest:

JENNIFER M. PERRIN
City Clerk

State of California
County of San Joaquin, ss.

I, Jennifer M. Perrin, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1647 was introduced at a regular meeting of the City Council of the City of Lodi held April 2, 1997, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 1997 by the following vote:

Ayes: Council Members -

Noes: Council Members -

Absent: Council Members -

Abstain: Council Members -

I further certify that Ordinance No. 1647 approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

JENNIFER M. PERRIN
City Clerk

Approved as to Form:

RANDALL A. HAYS
City Attorney